



August 21, 2019

Jim Madaffer  
Chairman of the Board  
San Diego County Water Authority  
4677 Overland Avenue  
San Diego, CA 92123

Subject: Potential De-Annexation of RMWD and FPUD from SDCWA

Dear Jim:

We have received your letter from earlier today. Your letter arrived just as we were preparing to send you this letter. In your letter you inquired as to the status of the "proposal" that we would be producing for the review of the SDCWA Board and GMs. Please find our response to your request attached.

Since our meeting on July 30th, we wanted to make certain that our information and numbers were accurate as possible, so we carefully prepared this document. Additionally, while we were preparing this we also thought that we might be receiving a detailed explanation as to what different view that SDCWA may have regarding the controlling provision of the County Water Authority Act; but we still have not received that.

We also spent a considerable amount of time attempting to align all the relevant statutes, codes, and policies that govern our relationship with SDCWA to the concept of an "exit fee" that you had proposed. We were unable to identify a mechanism that would allow us to calculate this "exit fee" so we continue to request that if SDCWA has information related to how this is done we would be appreciative if you could educate us in this regard.

Finally, we want to be clear that it is our goal to have meaningful discussions with SDCWA about the County Water Authority Act and come to some common understanding of the meaning of its provisions related to exclusion of territory. It is our hope to reach this understanding before our respective Boards take any action related to this process.

Sincerely,

RAINBOW MUNICIPAL WATER DISTRICT

A handwritten signature in black ink, appearing to read 'Tom Kennedy', is written over a horizontal line. Below the signature, the name 'Tom Kennedy' and the title 'General Manager' are printed in a black sans-serif font.

Tom Kennedy  
General Manager

ENCLOSURE: RMWD/FPUD Summary of Detachment Document

cc: SDCWA Board Members  
SDCWA General Managers  
FPUD/RMWD General Counsels

**Summary of Potential  
Rainbow Municipal Water District and  
Fallbrook Public Utility District  
Detachment/Exclusion from the San Diego  
County Water Authority and Annexation to  
Eastern Municipal Water District**

August 21, 2019

Prepared by

Jack Bebee, General Manager Fallbrook Public Utility District

Tom Kennedy, General Manager Rainbow Municipal Water District

## **EXECUTIVE SUMMARY**

Due to the unique location of Fallbrook Public Utility District (FPUD) and Rainbow Municipal Water District (RMWD) with connections on Metropolitan's aqueduct, the Districts have evaluated the feasibility of detachment/exclusion from San Diego County Water Authority (SDCWA) and attachment to Eastern Municipal Water District (EMWD). The evaluation shows that this process is feasible and saves a significant amount in purchased water costs and would result in a balance between cost and reliability that is appropriate for both Districts. The primary drivers for FPUD's and RMWD's continued interest in further evaluating this process are:

- The cost differential that the wholesale agency adds to Metropolitan Water District of Southern California's (MWD) cost. Currently this cost is \$11 an acre-foot for EMWD and over \$500 for SDCWA.
- FPUD and RMWD have fewer ratepayers with less household income and at the same time are paying high costs for wholesale water operations, maintenance and improvements of the Districts' local infrastructure, which creates affordability issues.
- The FPUD and RMWD service areas remain primarily rural agricultural in nature and are very different than almost all of the other SDCWA member agencies that have experienced urban growth and economic development. The calculation of the relative benefits of SDCWA supply reliability investments is different in our area than it is for the more urban areas.

### **1. BACKGROUND**

The SDCWA serves 24 member agencies and owns both water supply, treatment and conveyance facilities. SDCWA is a member agency of MWD. SDCWA both purchases water from MWD to meet some SDCWA water supply needs, and also receives its own water through MWD's conveyance system. In contrast to other MWD member agencies, which just own the turnout off MWDs aqueduct, SDCWA owns and operates its own conveyance facilities. Unlike all other SDCWA member agencies, due to their geographic location in the county, FPUD and RMWD receive the water they each purchase from SDCWA directly off the MWD conveyance facilities (See Figure 1 in Appendix A). Additionally, most of the SDCWA water purchased by both FPUD and RMWD is treated water from MWD's Skinner Water Treatment Plant, since the SDCWA Twin Oaks Valley Water Treatment Plant and SDCWA Desalination supplies are delivered to points further south on SDCWA's aqueducts.

FPUD is a founding member agency of the Water Authority and RMWD joined in 1954. Both Districts have a long and rich history as predominantly agricultural Member Agencies of the SDCWA. Growth of commercial agriculture within the FPUD and RMWD service areas was due to the availability of affordable imported water. With a price sensitive agricultural industry and a small and economically diverse resident population located in a rural setting, the customer base of both FPUD and RMWD is different from almost all other SDCWA member agencies. This difference makes it more challenging for FPUD and RMWD customers to absorb increases to the cost of SDCWA water and funding the maintenance and improvement of local infrastructure.

Because of their location, both Districts are unique and mostly **independent** of the SDCWA Aqueduct system, its reservoirs and its water treatment plant. These are key attributes shared by both Districts:

- Most of both Districts' water is delivered through MWD owned pipelines

- The Districts' connections on SDCWA owned pipelines are at the very top of SDCWA's Aqueduct system to pipelines that were built in the 1950s and 1970s
- Because of a lack of facilities, neither District receives treated water from the SDCWA Twin Oaks Valley Water Treatment Plant, although under certain hydraulic conditions RMWD can receive limited amounts of water to its furthest southern service area
- Nearly all of both Districts' treated water is currently delivered from MWD's Lake Skinner Water Treatment Plant and all demands can be provided through this plant
- Although both Districts pay for emergency water service, neither can physically receive deliveries from SDCWA in a catastrophic emergency or even in the event of an SDCWA shutdown for repair as is happening currently on pipeline 4
- A substantial amount of both Districts' agricultural customer base is tied to MWD for price and reliability through SDCWA's Transitional Special Agricultural Water Rate (TSAWR)

## **2. DIFFERENCES IN FPUD AND RMWD RATEPAYER CHARACTERISTICS**

The FPUD and RMWD service areas are very different than almost all of the other SDCWA member agencies that have experienced rapid growth and economic development and where availability of additional water supply and reliability is most critically important. It is a comparison of a rural and semi-rural area that land use plans indicate will remain as such to the urban and suburban core of San Diego County where most people and economic activity is located. Population and housing density are the two most important attributes of the strength of a water utility's rate base to meet its mission in an affordable manner. The service areas of both our districts could not be more different than the rest of the SDCWA service area.

FPUD and RMWD have fewer ratepayers with less household income and at the same time are paying high costs for wholesale water operations, maintenance and improvements of the Districts' local infrastructure, which creates affordability issues. Larger populations with more households per acre and less price sensitive commercial and industrial customers spreads the cost of wholesale water and local infrastructure costs over vastly more ratepayers and addresses many affordability problems.

FPUD/RMWD will continue to be defined by low population and housing density that cannot be offset by higher household incomes.

In exploring detachment/exclusion from the Water Authority and annexation to EMWD, FPUD and RMWD have evaluated, and still are evaluating, several factors. First, the Districts are evaluating, as indicated in **Table 1**, the 2020 differential between SDCWA Full Service Municipal and Industrial (M&I) rates and what EMWD has indicated would be the rate charged to the Districts.

**Table 1 – Comparison of SDCWA and EMWD/MWD Rates**

	SDCWA	EMWD/MWD
<i>Rate Component</i> <i>(\$/AF)</i>		
<i>FS TR</i>	\$ 1,686	\$ 1,078
<i>RTS</i>	\$ 28	\$ 82
<i>CC</i>	\$ 24	\$ 24
<i>IAC</i>	\$ 43	\$ -
<i>EMWD</i>	\$ -	\$ 11
<i>Total</i>	\$ 1,781	\$ 1,195
<i>Rate Differential</i>		(\$586)/AF
<i>Rate Differential</i> <i>w/o Transp.</i>		(\$454)/AF

Source: SDCWA and MWD websites

Note: IAC is converted to \$ per AF based on FPUD/RMWD 2020 shares divided by FPUD/RMWD 3 year average of SDCWA deliveries

MWD RTS is based on FPUD and RMWD 2020 shares divided by FPUD and RMWD 10 year deliveries

MWD CC is based on FPUD and RMWD actual 2020 shares divided by FPUD RMWD 3 year average

Stand-By Availability charge is considered equivalent regardless of membership and not shown

Second, the Districts are assessing the continuing upwards pressure on SDCWA's rates caused by overall reduced demand and increased costs for its more reliable supply sources as it reduces SDCWA's lower cost purchases from MWD. Although SDCWA's use of reserves over the last few years has reduced potential rate impacts from lower demand and increasing supply costs the Districts see that as temporary and short term rate relief. In short, with reduced demand on SDCWA the Districts are concerned about long term rate impacts.

In forecasting future water rates, the Districts do not find a disparity in cost drivers that indicate MWD rates will increase at a much more rapid rate than SDCWA's rates. **Figure 2 in Appendix A** is an analysis that shows SDCWA rates increasing at what may be an optimistic annual average of 3% while MWD rates increase at a more conservative 4% and EMWD's mark up at 3.5%. Even if SDCWA rates do increase at a rate less than MWD and EMWD (which is optimistic), there is still considerable long-term savings to FPUD and RMWD.

The Districts are also evaluating detachment/exclusion from the perspective of identifying longer term price certainty for the Districts' commercial agricultural customers that are under the Transitional Special Agricultural Water Rate (TSAWR) program. In CY 2020 TSAWR customers wholesale cost of water will be \$494/AF lower (\$362/AF for deliveries not charged the Transportation rate) than SDCWA's full service Municipal & Industrial treated water rate. In exchange for a reduced rate, TSAWR customers receive lower reliability and do not benefit from SDCWA water supply investments in a cutback.

**Table 2 - Comparison of 2020 Water Rates - SDCWA TSAWR, Full Service M&I and Potential EMWD Charges**

	<u>Rate</u>	<u>TSAWR</u>	<u>SDCWA FS</u>	<u>EMWD</u>
<i>Treated</i>		\$1,192	\$1,686	\$1,078
<i>RTS</i>	28		28	82
<i>CC</i>	24		24	24
<i>IAC</i>	43		43	0
<i>EMWD</i>				11
<i>Total</i>		\$1,287	\$1,781	\$1,195
<i>Rate Differential From</i>		(\$494/AF)		(\$586/AF)
<i>SDCWA FS</i>				
<i>W/O Transportation</i>		(\$362/AF)		(\$454/AF)

Source :SDCWA and MWD websites

Note: IAC is converted to \$ per AF based on FPUD/RMWD 2020 shares divided by FPUD/RMWD 3 year average of SDCWA deliveries

MWD RTS is based on FPUD and RMWD 2020 shares divided by FPUD and RMWD 10 year deliveries

MWD CC is based on FPUD and RMWD actual 2020 shares divided by FPUD RMWD 3 year average

Stand-By Availability charge is considered equivalent regardless of membership and not shown

TSWR has been critical in addressing the affordability needs of the two District's commercial agricultural customers. TSAWR is a discretionary program that for the fifth time in just over 10 years is under review by SDCWA to determine if it should be extended and does not allow for new customers to enter the program. Since those customers are already tied to MWD full service rates and reliability, detachment/exclusion would provide price certainty in the longer term than continued reliance on SDCWA's Transitional Agricultural Water Program. Termination or substantial reduction in the benefit of that program would have severe financial impacts on both Districts' commercial agricultural customers.

### **3. WHAT ARE THE LONG TERM COST IMPACTS TO SDCWA MEMBER AGENCIES**

In a recent email to the Board of Directors and member agency General Managers SDCWA staff, using 2018 as the base year, estimated that the annual loss in revenue to SDCWA from an FPUD and RMWD detachment/exclusion was \$13.4 Million. There was no explanation in the communication as to the basis of this number (how it was calculated/ what it represents). We have requested the basis of that calculation because it is substantially higher than what we have estimated but we were told by SDCWA counsel that it will not be provided.

In the absence of a response from SDCWA we prepared an estimate of the FPUD and RMWD contributions to SDCWA revenue in a Base Year of FY 2018. We used SDCWA source documents to determine the amount of water deliveries and revenues contributed by FPUD and RMWD in FY 2018. We believe the correct approach is to determine the amount of revenue contributed is to also calculate as credits revenue collected by SDCWA and passed through to MWD and revenue that SDCWA would no longer be charged by MWD in a detachment/exclusion. For example, SDCWA purchases treated MWD Tier 1 water to serve

FPUD/RMWD. SDCWA paid 20-\$23 more per acre foot. Specifically, FPUD/RMWD deliveries associated with MWD's Readiness To Serve (RTS) and Capacity Charge (CC) will be charged to EMWD and will no longer be assessed to SDCWA.

The Table 3 below provides an estimate of FPUD and RMWD FY 2018 revenues contributed for SDCWA costs adjusted for SDCWA savings resulting from a potential detachment/exclusion.

**Table 3: SDCWA Annual Net Revenue from FPUD/RMWD**

Fixed Charges <sup>1</sup>	Melded Supply <sup>2</sup>	Transp Charge	Melded Trtmnt. Credit <sup>3</sup>	Avoided RTS	Avoided CC	Total Net Revenue
\$7,476,818	\$ 3,614,531	\$ 1,467,831	\$ (638,547)	\$(1,687,420) <sup>1</sup>	\$ (767,823)	\$ 9,462,890

<sup>1</sup> Amounts From SDCWA 2016 and 2017 Rates & Charges Ordinances

<sup>2</sup> Non TSAWR deliveries less MWD Tier 1 pass through

<sup>3</sup> Melded Treatment Rate less MWD Treated Surcharge results in a credit to SDCWA.

According to SDCWA's 2018 Comprehensive Annual Financial Report (CAFR) a net reduction in revenue of \$9,462,890 is equal to 1.4% of Total FY 18 Operating Revenue of \$663.5 Million (see below Table 9 copied from the SDCWA CAFR). We believe illustrating for the benefit of other SDCWA member agencies, the cost of FPUD/RMWD detachment/exclusion on a single year of revenue does not provide an accurate picture of the longer term impacts. For example, FPUD will soon begin construction of the Santa Margarita River Conjunctive Use Project (SMRCUP), a groundwater conjunctive use local supply project that will provide it an average annual yield of 3,100 acre feet. Like any other SDCWA member agency with a local supply, its demand on SDCWA for water will be reduced, as will its contribution for the volumetric fixed charges for Customer Service, Storage and Supply Reliability. It will also avoid MWD Tier 1 purchases and treatment and reduce payments for RTS and CC. Looking longer term the loss of revenue from FPUD/RMWD detachment/exclusion will be further reduced as it pertains to IAC revenue which will be replaced by growth in meters in future years in other service areas that are experiencing substantial growth.

## Operating Results

**TABLE 9. HISTORICAL OPERATING RESULTS BY FISCAL YEAR, THOUSANDS OF DOLLARS \***

	2014	2015	2016	2017	2018
<b>Operating Revenue</b>					
Water Sales <sup>(1)</sup>	\$ 593,695	\$ 584,173	\$ 524,935	\$ 579,057	\$ 591,809
Standby Charges	11,137	11,107	11,088	11,091	11,103
Capacity Charges	13,815	22,560	15,839	21,081	28,154
Infrastructure Access Charges <sup>(2)</sup>	29,206	29,896	30,434	31,145	32,482
<b>Total Operating Revenue</b>	<b>\$ 647,853</b>	<b>\$ 647,736</b>	<b>\$ 582,296</b>	<b>\$ 642,374</b>	<b>\$ 663,548</b>

SOURCE: SDCWA 2018 CAFR

There is also some capital program savings to the other agencies due to the detachment of FPUD/RMWD. As noted previously FPUD/RMWD are unable to receive emergency water service because of the lack of a pump station capable of conveying treated water to our agencies. FPUD/RMWD detachment/exclusion will avoid the remaining \$36,690,000 of the total \$39,900,000 capital expense for the Emergency Storage Project's North County Pump Station. The budgetary impact of not building that facility should be considered at least a \$2 million annual credit if amortized over 30 years at a 4% interest rate plus any avoided annual operating costs.

#### **4. LEGAL PROCESS FOR DETACHMENT/EXCLUSION AND TERMS**

As noted above, the County Water Authority Act (Water Code Appendix sections 45-1 et seq.), the law under which SDCWA exists and is organized, provides the organizational framework for county water authorities formed in California. Section 45-11 of the CWA Act sets forth certain requirements a member agency must follow in order to detach from SDCWA, including requiring an election of the electors of the member agency seeking detachment. However, the process for detachment/exclusion of the Districts from SDCWA and annexation of the Districts into EMWD, must be brought before the applicable Local Agency Formation Commissions (LAFCO) pursuant of the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 (Government Code section 56000 et seq.) (CKH Act). Here because of the nature of the jurisdictional changes that will be involved if the Districts ultimately pursue detachment/exclusion, proceedings by both San Diego LAFCO and Riverside LAFCO will be involved.

Under the CKH Act, LAFCOs are charged with conducting hearings, making determinations, and imposing conditions on the approval of proposed changes in certain public agency boundaries within the county in which the LAFCO sits. Here the exclusion from SDCWA, and annexation of FPUD into EMWD, would result in EMWD being located in more than one county (San Diego and Riverside) and therefore proceedings before both San Diego LAFCO and Riverside County LAFCO will be involved. The Districts' understanding from its discussion with San Diego LAFCO is that the following will need to take place:

- An Application would be filed with Riverside LAFCO to amend EMWD's sphere of influence to add the territory within the jurisdictional boundaries of RMWD and FPUD, along with a supporting municipal service review document. The Districts understand, again from discussions with San Diego LAFCO, that the outcome of the sphere of influence amendment would be the basis for considering a separate application to San Diego LAFCO, as described in the next bullet.
- Application(s) would be filed with San Diego LAFCO seeking detachment/exclusion from SDCWA and annexation into EMWD (a "reorganization" under the CKH Act). San Diego LAFCO's consideration would occur following the action of Riverside LAFCO with San Diego LAFCO serving as the principal county for purposes of the reorganization.

Ultimately, should both Riverside LAFCO (for the sphere of influence amendment) and San Diego LAFCO (for the reorganization, i.e., detachment/exclusion from SDCWA and annexation into EMWD) be approved, the reorganization would not take effect until after the electors of RMWD and/or FPUD vote in support of the reorganization. If the election is successful, the taxable property within the detaching member agency may still continue to be taxable by SDCWA for the purpose of paying bonded and other indebtedness outstanding or contracted for at the time of the detachment/exclusion. (Water Code Appendix section 41-11(a)(2).)



The preference of FPUD/RMWD would be to establish potential terms with SDCWA to include as part of the application for detachment/exclusion if the District's governing bodies elect to submit an application to San Diego LAFCO. As part of this process, on May 21, 2019, Tom Kennedy, RMWD's General Manager met with SDCWA Chair Madaffer and Vice Chair Croucher, at which Mr. Kennedy shared that RMWD and FPUD were exploring the feasibility of detachment/exclusion from SDCWA and annexing into Eastern MWD. At this meeting Chair Madaffer first raised the concept of payment by RMWD and FPUD of an appropriate "exit fee." No commitments were made at that time other than an agreement to meet to discuss the "exit fee" concept and how it fit into the framework set out in the CWA Act for detachment/exclusion of member agencies. Ultimately this meeting did not occur until July 30, 2019. In attendance were representatives from SDCWA (Board Officers, Acting General Manager and Counsel), representatives of both FPUD and RMWD (General Managers and Counsel). While FPUD and RMWD were prepared to discuss the CWA Act, including the provisions establishing the manner in which a member agency may seek detachment/exclusion from SDCWA, SDCWA's General Counsel indicated that he was not prepared to discuss the CWA Act at this meeting. There was some discussion about the "exit fee" concept but no statutory authority for the "exit fee" was provided.<sup>1</sup> After considerable back and forth, Chair Madaffer asked the representatives from Rainbow and Fallbrook to come up with a proposal on how we would calculate this "exit fee."

In the absence of any statutory basis, the "exit fee" concept has significant challenges. As an example, consider when a corporation divides itself into two successor entities, an area where there is considerable case law for guidance. If a corporation were to split, the assets and liabilities of the corporation are divided to apply a relative share of these assets and liabilities to each of the new entities. SDCWA has detailed calculations of the financial contribution of each member agency that is used to define the voting rights on the SDCWA Board. In this situation, as of January 1, 2018 Rainbow has contributed a bit over \$500 Million to SDCWA over the years and Fallbrook just under \$300 Million. Our relative share of total financial contributions to SDCWA as a percentage of all contributions are 4.00% for Rainbow and 2.32% for Fallbrook. Historically, this issue has been fraught with controversy by and among SDCWA member agencies. For this reason, the Districts firmly believe that focusing on the statutory provisions in the County Water Authority Act regarding detachment/exclusion and continuing obligations of agencies detached/excluded from SDCWA, rather than concepts not statutorily applicable in to SDCWA (such as "exit fee/ credit for assets").<sup>2</sup>

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<sup>1</sup> As stated in Section 4 above, there is no statutory requirement for an "exit fee" when a SDCWA member agency successfully detaches/excludes itself from SDCWA. Instead, as outlined in Section 4 above, the CWA Act contains specific provisions detailing how existing debt obligations are secured should a member agency detachment/exclusion from SDCWA occur.

<sup>2</sup> In this model of corporate separation, RMWD and FPUD would be liable for 4% and 3.32% of the liabilities of SDCWA, respectively. However, in this method of accounting, should one of the entities that is separating leave assets behind with the other entity, they would also be credited for the assets they are leaving behind. If we were to apply this commonly used methodology in the corporate world to this situation, the situation gets more challenging as all of the assets owned by SDCWA were paid for by its member agencies over time. Since RMWD and FPUD may propose to be divested of all ownership of all assets, the value of the assets paid for by the ratepayers of RMWD and FPUD would then be reapportioned among the remaining member agencies, increasing their respective "ownership" value of these assets. RMWD and FPUD would need to be compensated for these assets. Since the assets owned by SDCWA exceed the liabilities, the net outcome of this concept would mean that SDCWA would end up owing RMWD and FPUD considerable sums of money as part of this process.

Because of this, we recommend that SDCWA, RMWD and FPUD work together to follow the provisions of the CWA Act as it pertains to the detachment/exclusion of member agencies from SDCWA. After all, when the California Legislature created the CWA Act, it clearly intended to provide a process for member agency detachment/exclusion from a County Water Authority. A copy of the statutory language relative to detachment/exclusion of territory from the CWA Act is included in Appendix B. Ignoring clearly applicable statutory language and instead crafting some sort of “exit fee” outside of the structures provided in the CWA Act could be legally problematic.

With that said, if SDCWA has some alternative interpretation of the applicable provisions of the CWA Act, and does not result in the unintended consequences described above, both RMWD and FPUD would be happy to discuss this methodology.

# Appendix A

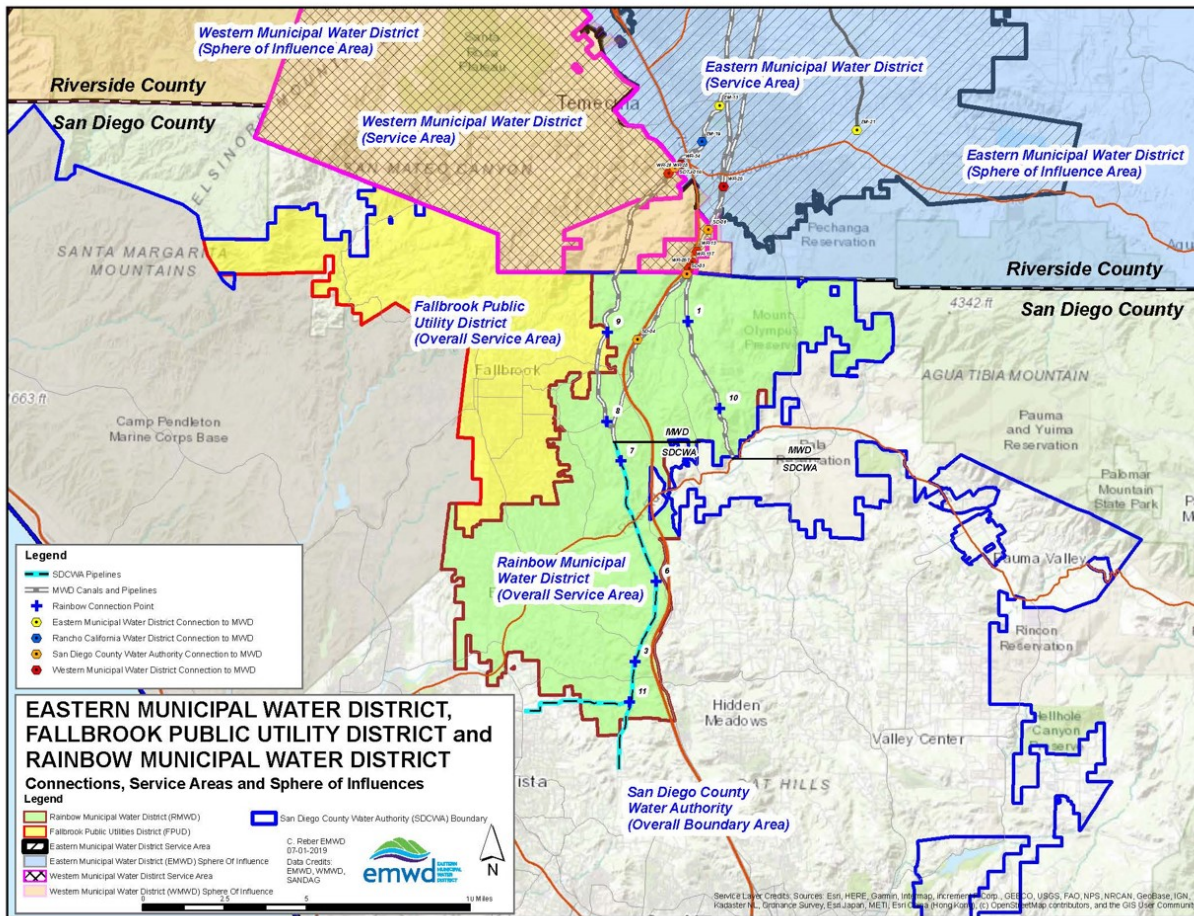


Figure 1 – Location of FPUD/RMWD relative to MWD and SDCWA aqueducts.

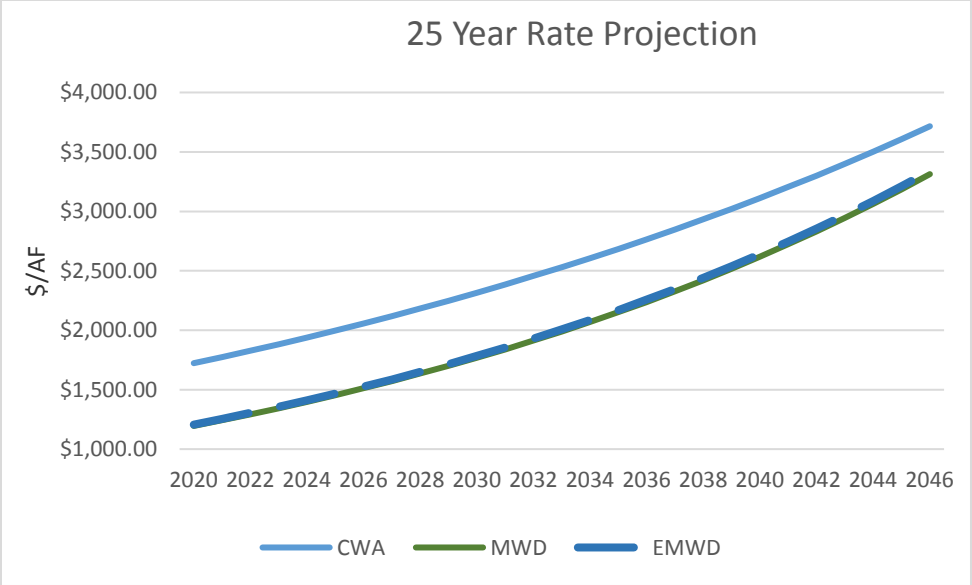


Figure 2- Projection of CWA, MWD and EMWD Rates

## **APPENDIX B**

authority of the territory transferred to that ownership.

(i) If a county water authority is a member public agency of a metropolitan water district organized under the Metropolitan Water District Act (Chapter 200 of the Statutes of 1969), that metropolitan water district may impose any or all of the terms and conditions that may be imposed by a county water authority pursuant to subdivisions (a) through (h) of this section in any resolution fixing the terms and conditions for the concurrent annexation of territory in a military reservation.

§ 45-10.3. Public agency within unit of county water authority; procedure to become separate unit

Sec. 10.3. (a) A public agency whose corporate area is wholly within the corporate area of another public agency which is already included within a county water authority as a separate unit, may also become a separate unit of such county water authority in the manner provided in this section.

(1) The governing body of a public agency seeking status as a separate unit of a county water authority shall apply by resolution to the board of directors of such county water authority for consent to detach its corporate area from the existing separate unit of which it is a part and to become a separate unit of such county water authority.

(2) The board of directors of the county water authority may grant or deny such application and in granting the same may fix the terms and conditions upon which such applying public agency may become a separate unit of the county water authority; provided, however, that such consent shall not be given unless and until by resolution the governing body of the existing separate unit of the county water authority also gives its consent to the proposed detachment of such territory and to the applying public agency becoming a separate unit of such county water authority.

(3) Proceedings for the detachment of the corporate area of the public agency seeking status as a separate unit of the county water authority from the corporate area of the existing separate unit shall be conducted in the manner prescribed by law; provided, however, that the effective date of such detachment shall be after the completion of the proceedings provided by paragraph (4) of this subdivision.

(4) The detachment of the corporate area of the public agency seeking status as a separate unit from the corporate area of the existing separate unit shall not be effective until the secretary of the agency seeking status as a separate unit has filed with the secretary of the county water authority a certificate certifying the completion of all requirements of law for such detachment. A certificate of proceedings hereunder shall thereupon be prepared by the secretary of the county water authority and filed with the Secretary of State. Upon filing of such certificate of proceedings with the Secretary of State or upon the effective date of the detachment as set forth in any terms and conditions applicable thereto, whichever is later, the corporate area of the agency seeking separate unit status shall thereupon become a separate unit of the county water authority and shall have all of the rights and privileges thereof.

(b) Notwithstanding anything to the contrary in Section 11 of this act, if proceedings are conducted in accordance with this section, the territory detached from the existing separate unit of the county water authority shall remain at all times a part of the corporate area of such authority.

§ 45-11. Exclusion of territory

Sec. 11. (a) **Methods.** Exclusion of territory from any county water authority may be effected by either of the following methods:

(1) Territory excluded from the portion of the corporate area of any public agency which lies within the exterior boundaries of a county water authority, the public agency being a unit of the authority, and which exclusion occurs in accordance with the provisions of law applicable to those exclusions, shall thereby be excluded from and shall no longer be a part of the authority; provided, that the taxable property within the excluded territory shall continue to be taxable by the county water authority for the purpose of paying the bonded or other indebtedness outstanding or contracted for at the time of the exclusion and until the bonded or other indebtedness has been satisfied; provided further, that if the taxable property within the excluded territory or any part thereof shall be, at the time of the exclusion, subject to special taxes levied, or to be levied, by the county water authority pursuant to terms and conditions previously fixed under paragraph subdivision (c) or (d) of Section 10 for the annexation of the excluded territory or part thereof to the county water authority, the taxable property within the excluded territory or part thereof so subject to those special taxes shall continue to be taxable by the county water authority for the purpose of raising the aggregate sums to be raised by the levy of special taxes upon taxable property within the respective annexing areas pursuant to terms and conditions for the annexation or annexations as so fixed and until the

aggregate sums have been so raised by the special tax levies.

Exclusion of territory from a county water authority pursuant to this paragraph shall not occur if two or more public agencies that are included in a county water authority as separate units are subject to a reorganization of their boundaries under applicable provisions of law which would result in an exchange or transfer, but not an overlapping, of territory that is entirely within the county water authority. The boundaries of those agencies within the county water authority, upon that reorganization and the filing with the secretary of the county water authority of a copy of the certificate of completion prepared, executed, and filed by the executive officer of the local agency formation commission responsible therefor constitute the boundaries of the agencies for all purposes of the county water authority, without action by the board of directors of the county water authority. If the exchange includes territory subject to special conditions and tax levies pursuant to the terms of annexation at the time the territory became a part of the county water authority, the territory shall continue to be subject to those conditions and to be taxable by the county water authority or those levies.

From and after the effective date of the inclusion of the territory by the including public agency, the territory shall be considered to be a part of the corporate area of the including agency; provided, however, that, if the taxable property within the territory, or any portion thereof, is subject to special taxes levied or to be levied by the county water authority pursuant to terms and conditions previously fixed under subdivision (c) or (d) of Section 10 for the annexation of the territory or portion thereof to the county water authority, then the taxable property within the territory shall continue to be taxable by the county water authority for the purpose of raising the aggregate sums to be raised by the levy of the special taxes pursuant to the terms and conditions for the annexation or annexations as so fixed and until the aggregate sums have been so raised by the special tax levy.

(2) Any public agency whose corporate area as a unit has become or is a part of any county water authority may obtain the exclusion of the area therefrom in the following manner:

The governing body of any public agency may submit to the electors thereof at any general or special election the proposition of excluding from the county water authority the corporate area of the public agency. Notice of the election shall be given in the manner provided in subdivision (c) of Section 10. The election shall be conducted and the returns thereof canvassed in the manner provided by law for the conduct of elections in the public agency. If a majority of electors voting thereon vote in favor of withdrawal, the result thereof shall be certified by the governing body of the public agency to the board of directors of the county water authority. A certificate of the proceedings shall be made by the secretary of the county water authority and filed with the Secretary of State. Upon the filing of the certificate, the corporate area of the public agency shall be excluded from the county water authority and shall no longer be a part thereof; provided, that the taxable property within the excluded area shall continue to be taxable by the county water authority for the purpose of paying the bonded and other indebtedness of the county water authority outstanding or contracted for at the time of the exclusion and until the bonded or other indebtedness has been satisfied; provided further, that if the taxable property within the excluded area or any part thereof is, at the time of the exclusion, subject to special taxes levied or to be levied by the county water authority pursuant to the terms and conditions previously fixed under subdivision (c) or (d) of Section 10 for the annexation of the excluded area or part thereof to the county water authority, the taxable property within the excluded area or part thereof so subject to the special taxes shall continue to be taxable by the county water authority for the purpose of raising the aggregate sums to be raised by the levy of special taxes upon taxable property within the respective annexing areas pursuant to the terms and conditions for the annexation or annexations as so fixed and until the aggregate sums have been so raised by the special tax levies. Upon the filing of the certificate of proceedings, the Secretary of State shall, within 10 days, issue a certificate reciting the filing of the papers in his or her office and the exclusion of the corporate area of the public agency from the county water authority. The Secretary of State shall transmit the original of the certificate to the secretary of the county water authority and shall forward a certified copy thereof to the county clerk of the county in which the county water authority is situated.

**(b) Statement of boundary changes.** Whenever territory is excluded from any public agency in accordance with paragraph (1) of subdivision (a), the governing body, or clerk thereof, of the public agency shall file with the board of directors of the county water authority a statement of the change of boundaries of the public agency, setting forth the legal description of the boundaries of the public agency, as so changed, and of the part thereof within the county water authority, which statement shall be accompanied by a map or plat indicating the boundaries.

**(c) Previously excluded territory.** Whenever any territory has been excluded from any public agency prior to the effective date of this section, under conditions which would have resulted in the exclusion of the territory from a county water authority had paragraph (1) of subdivision (a) then been in effect, upon compliance with the following provisions of this paragraph, the territory shall be excluded from and shall no longer be a part of, the authority, the

last-mentioned provisions being as follows:

(1) The governing body of the public agency may adopt an ordinance which, after reciting that the territory has been excluded from the public agency by proceedings previously taken under statutory authority, and after referring to the applicable statutes and to the date or dates upon which the exclusion became effective, shall describe the territory and shall determine and declare that the territory shall be, and thereby is, excluded from the county water authority.

(2) The governing body, or clerk thereof, of the public agency shall file a certified copy of the ordinance with the Secretary of State. Upon the filing of the certified copy of the ordinance in the office of the Secretary of State, the territory shall be excluded from, and shall no longer be a part of, the county water authority; provided, that the taxable property within the excluded territory shall continue to be taxable by the county water authority for the purpose of paying the bonded or other indebtedness outstanding or contracted for at the time of the exclusion, and until the bonded or other indebtedness has been satisfied; provided further, that if the taxable property within the excluded territory or any part thereof is, at the time of the exclusion, subject to special taxes levied or to be levied by the county water authority pursuant to terms and conditions previously fixed under subdivision (c) or (d) of Section 10 for the annexation of the excluded territory or part thereof to the county water authority, the taxable property within the excluded territory or part thereof so subject to the special taxes shall continue to be taxable by the county water authority for the purpose of raising the aggregate sums to be raised by the levy of special taxes upon taxable property within the respective annexing areas pursuant to the terms and conditions for the annexation or annexations as so fixed, and until the aggregate sums have been so raised by the special tax levies.

(3) Upon the filing of the certified copy of the ordinance, the Secretary of State shall, within 10 days issue a certificate describing the territory, reciting the filing of certified copy of the ordinance and the exclusion of the territory from the county water authority, and declaring that the territory is no longer a part of the county water authority. The Secretary of State shall transmit the original of the certificate to the secretary of the county water authority and shall forward a certified copy of the certificate to the county clerk of the county in which the county water authority is situated.

**(d) Territory exchanged or transferred among public agencies.** Whenever any territory has been exchanged or transferred pursuant to law prior to January 1, 1986, among two or more public agencies that are included in a county water authority as separate units, the territory shall not be deemed excluded from the county water authority, notwithstanding the failure of the county water authority to give its consent to the exchange or transfer of the territory, if there has been filed with the board of directors of the county water authority prior to January 1, 1986, a statement of the change of boundaries of the agencies, as so changed, and of the part within the county water authority, which statement shall be accompanied by a map or plat indicating those boundaries.

§ 45-11.1. Territory within multiple public agencies in authority as separate units

Sec. 11.1. Any territory within a county water authority which lies within two or more public agencies, the corporate areas of which are included within such county water authority as separate units, shall, subject to the conditions hereinafter provided, for the purposes of this act and for all related purposes (other than local purposes of such public agencies) involving in any manner the respective territorial boundaries and jurisdiction of such public agencies, be considered to be a part of the respective public agency which will supply water to such overlapping territory, as determined in the manner provided herein; provided, that if the taxable property within such overlapping territory or any portion thereof shall be subject to special taxes levied or to be levied by such county water authority pursuant to terms and conditions theretofore fixed under the provisions of paragraph (c) or paragraph (d) of Section 10 of this act for the annexation of such overlapping territory or portion thereof to such county water authority, then such taxable property within such overlapping territory shall continue taxable by such county water authority for the purpose of raising the aggregate sum or sums to be raised by the levy of such special taxes pursuant to terms and conditions for such annexation or annexations as so fixed and until such aggregate sum or sums shall have been so raised by such special tax levies; and provided, further, that the public agency of which such overlapping territory shall be considered to be a part shall be determined in the following manner and subject to the following conditions:

(1) The governing body of each public agency in which any such overlapping territory lies, shall, on or before October 1st of any calendar year, file with the board of directors of the authority a certified copy of a resolution of such governing body which shall contain a legal description of any such overlapping territory or portion thereof which will be supplied with water by such public agency during the next ensuing fiscal year commencing July 1st next following, and such certified copy of such resolution so filed shall be accompanied by a map or plat showing the respective boundaries of each overlapping territory or portion thereof so to be supplied with water by such public



agency.

(2) On or before November 1st of such calendar year, the board of directors of the authority shall consider all documents so filed with the authority as required under subparagraph (1) above, and by resolution shall determine which public agency will supply water to each such overlapping territory or portion thereof during the next ensuing fiscal year commencing July 1st next following; in the event that the board of directors of the authority, from the evidence submitted, cannot determine which public agency will supply water to any overlapping territory or portion thereof, then the board of directors shall determine that such overlapping territory or portion thereof shall be considered to be a part of, and shall designate, the public agency within which such overlapping territory or portion thereof first was included; and such resolution shall contain a legal description of each such overlapping territory or portion thereof respecting which any such determination is made.

(3) The board of directors of the authority, on or before November 20th of such calendar year, shall file with the county assessor of the county in which such overlapping territory shall lie and with the State Board of Equalization and in the event that such county water authority shall be included within a metropolitan water district as a separate unit then also with the board of directors of such metropolitan water district, a certified copy of such resolution of the board of directors of the authority so determining the matters required to be determined by it under subparagraph (2) above, accompanied by map or maps or plat or plats showing the respective boundaries of each overlapping territory or portion thereof described in such resolution.

(4) Any determination made by the board of directors of the authority and evidenced by the filing of the documents required by subparagraph (3) hereof shall be effective until changed by later determination by said board of directors and the evidencing thereof by the filing of the required documents.

(5) Any overlapping territory or portion thereof respecting which no determination shall have been made by the board of directors of the authority and evidenced by the filing of the documents required by subparagraph (3) hereof shall be considered to be a part of the public agency within which such overlapping territory or portion thereof first was included.

§ 45-12. Repealed by Stats.1970, c. 447, p. 896, § 23

§ 45-13. Administrative authority

Sec. 13. (a) All matters and things necessary for the proper administration of the affairs of the authority that are not provided for in this act shall be provided for by the board of directors of the authority by ordinance or resolution. Any action required by this act to be done by resolution may be done, with equal validity, by ordinance.

(b)(1) The board of directors of the authority may adopt regulations regarding its facilities, property, and rights-of-way. The board of directors, by ordinance, may make a violation of any regulation adopted pursuant to this subdivision subject to an administrative fine.

(2) The board of directors shall set forth, by ordinance or resolution, the administrative procedures that govern the imposition, enforcement, collection, and administrative review by the authority of those administrative fines.

(3) The amount of the administrative fine shall not exceed the maximum fine for infractions set forth in subdivision (b) of Section 25132 and subdivision (b) of Section 36900 of the Government Code. For the purpose of carrying out this subdivision, Section 53069.4 of the Government Code applies, except that any action required by that section to be taken by ordinance may be taken by resolution of the board of directors.

(c) The board of directors of the authority, by ordinance, may establish procedures for the abatement of encroachments that violate any regulation adopted pursuant to subdivision (b) and to recover the costs of abatement by means of a lien with the status and priority of a judgment lien on the property that is subject to the easement or right-of-way from which the encroachment is abated. These procedures shall provide for a reasonable period, specified in the ordinance, during which a person responsible for a continuing violation may abate the encroachment before the commencement of any abatement under this section. For the purposes of carrying out this subdivision, Section 38773.1 of the Government Code applies, except that any action required by that section to be taken by the legislative body shall be taken by the board of directors of the authority. The remedy authorized in this subdivision is cumulative to any other remedy authorized by law.